

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	File No.: EB-TCD-12-00000420 ¹
)	
LDC Telecommunications, Inc.)	NAL/Acct. No.: 201232170010
)	
Apparent Liability for Forfeiture)	FRN: 0004337556

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 30, 2012**Released: August 30, 2012**

By the Commission: Commissioner Pai approving in part, dissenting in part and issuing a statement.

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that LDC Telecommunications, Inc. (LDC or Company)² apparently willfully and repeatedly violated Section 258 of the Communications Act of 1934, as amended (Communications Act or Act),³ and Sections 64.1120 and 64.1150 of the Commission's rules.⁴ As discussed in detail below, we find that LDC has apparently changed the preferred carriers of 27 consumers without proper authorization, a practice commonly known as "slamming," and has apparently failed to respond to seven slamming complaints. Based upon our review of the facts and circumstances surrounding these apparent violations, we propose a monetary forfeiture of one million, one hundred eight thousand dollars (\$1,108,000) against LDC for the apparent violations.

II. BACKGROUND

2. The Enforcement Bureau (Bureau) initiated an investigation of LDC after reviewing numerous complaints from consumers alleging they had been slammed by LDC or charged by LDC for service they did not authorize. Most complaints were filed with the Commission and processed through the Consumer & Governmental Affairs Bureau (CGB).⁵ CGB generally notifies carriers of individual consumer slamming complaints by sending a copy of the complaint to the carrier and directing it to respond to the allegations and provide evidence of an authorized change in a subscriber's selection of a

¹ This case was formerly assigned the file number EB-11-TC-105. In January 2012, the Telecommunications Consumers Division assigned the case a new number.

² According to the Commission's records and publicly available information, LDC is a non-facilities based interexchange carrier with offices at 2451 McMullen Booth Road, Suite 200, Clearwater, FL 33759. The Company's President is Sean Connors and the Chief Operating Officer is Richard Clark. LDC is authorized to provide facilities-based and resold international telecommunications services. See ITC-214-20080523-00238, Public Notice, "International Authorizations Granted: Section 214 Applications (47 C.F.R. § 63.18); Section 310(b)(4) Requests" (Jan. 2, 2009).

³ 47 U.S.C. § 258.

⁴ 47 C.F.R. §§ 64.1120 and 64.1150.

⁵ In addition, the Bureau obtained slamming complaints from other sources such as the Federal Trade Commission (FTC) and the Better Business Bureau (BBB).

telecommunications service provider.⁶ After reviewing the carrier's response to the complaint, CGB then rules on whether the carrier violated the Commission's anti-slamming rules.⁷ CGB sent LDC 44 slamming complaints between January 2008 and March 2012. LDC failed to respond to all but five of the 44 complaints. With respect to the 39 complaints to which LDC failed to respond, CGB issued orders granting the complaints and finding that LDC's actions resulted in a "slam," i.e., unauthorized switch in the Complainants' telecommunications service providers.⁸ For the five complaints to which LDC did respond, CGB determined that LDC failed to provide evidence of an authorized carrier change and issued orders granting the complaints.⁹

3. As part of its investigation, the Enforcement Bureau sent LDC a letter of inquiry (LOI) on October 13, 2011, which ordered LDC to provide certain information and documents relating to potential violations of the Commission's carrier change rules.¹⁰ LDC did not respond. Accordingly, on January 18, 2012, the Bureau issued an NAL against LDC for violating a Bureau order.¹¹ Nearly three months and numerous filings later, LDC ultimately responded to the Bureau's LOI.¹²

III. DISCUSSION

A. Apparent Violations of Section 258 of the Act and Sections 64.1120 and 64.1150 of the Commission's Rules

4. Section 258 of the Act prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or

⁶ See 47 C.F.R. § 64.1150(c), (d).

⁷ *Id.* at 64.1150(d).

⁸ The failure of LDC to respond or provide proof of verification is presumed to be clear and convincing evidence of a violation. See 47 C.F.R. § 64.1150(d).

⁹ See *LDC Telecommunications, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 25 FCC Rcd 12472 (CGB 2010); *LDC Telecommunications, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 23 FCC Rcd 11478 (CGB 2008); *LDC Telecommunications, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 23 FCC Rcd 11337 (CGB 2008); *LDC Telecommunications, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 23 FCC Rcd 10256 (CGB 2008); *LDC Telecommunications, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 23 FCC Rcd 8486 (CGB 2008).

¹⁰ See Letter from Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to LDC Telecommunications, Inc., Attn: Sean Connors (Oct. 13, 2011) (on file in EB-TCD-12-420) (LOI).

¹¹ See *LDC Telecommunications, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 300 (2012) (*First LDC NAL*) (proposing a \$25,000 forfeiture against LDC for failing to respond to the Bureau's LOI).

¹² See E-mail from Sean Connors, President of LDC, to Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Feb. 3, 2011) (on file in EB-TCD-12-420) (LOI Response). LDC's response included a one page document in response to the LOI questions. On February 8, 2012, LDC emailed supporting documents. See Emails from Sean Connors, President of LDC, to Erica McMahon, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (Feb. 8, 2012, 10:42 and 10:46 AM EST). On April 3, 2012, LDC supplemented its LOI Response. See Email from Richard Clark, Chief Operating Officer of LDC, to Erica McMahon, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (Apr. 3, 2012) (Supplemental LOI Response). On April 9, 2012, LDC provided additional documents required by the LOI. See Emails from Richard Clark, Chief Operating Officer of LDC, to Erica McMahon, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (Apr. 9, 2012, 11:37 AM, 1:52 PM, 1:57 PM EST) (Second Supplemental Response).

telephone toll service (the subscriber's "preferred carrier").¹³ Section 258 of the Act makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe."¹⁴

5. In accordance with Section 258, Section 64.1120(a) of the Commission's rules provides that no carrier "shall submit a change on the behalf of a subscriber . . . prior to obtaining: (i) Authorization from the subscriber, and (ii) Verification of that authorization in accordance with the procedures prescribed in this section."¹⁵ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.¹⁶

6. For third party verification, the Commission's rules require that the verification method confirm the following: the identity of the subscriber; that the person on the call is authorized to make the carrier change; that the person on the call wants to make the change; the names of the carriers affected by the change; the telephone numbers to be switched; and the types of service involved.¹⁷ In addition, Section 64.1120(c)(3)(iii) of the Commission's rules prohibits the third party verification from including any "misleading description of the transaction"¹⁸ This rule specifically states that the third party verification must elicit, among other things, "confirmation that the person on the call understands that a carrier change, not an upgrade to existing service, bill consolidation, or any other misleading description of the transaction, is being authorized."¹⁹ Carriers must keep audio records of the verification for a minimum of two years.²⁰

7. Each of the 27 consumers who filed the complaints that form the basis of this NAL contends that LDC changed their preferred carriers or charged them for service without authorization.²¹

8. In response to the Bureau's LOI,²² LDC provided three third party verification (TPV) recordings purportedly showing that those three complainants had authorized service with LDC.²³ We have reviewed the three TPVs and find that LDC's verifier did not confirm that the consumer wanted to

¹³ 47 U.S.C. § 258(a).

¹⁴ *Id.*

¹⁵ 47 C.F.R. § 64.1120(a)(1)(i), (ii).

¹⁶ *See* 47 C.F.R. § 64.1120(c).

¹⁷ 47 C.F.R. § 64.1120(c)(3)(iii).

¹⁸ *See* 47 C.F.R. § 64.1120(c)(3)(iii).

¹⁹ *Id.*

²⁰ 47 C.F.R. § 64.1120(c)(3)(iv).

²¹ Some complainants mischaracterize the potential violation as a "cram." The evidence before us, however, which includes copies of many complainants' telephone bills, shows that complainants' preferred carrier selections had been switched to LDC; therefore, the violation at issue is slamming, not cramming.

²² *See* LOI *supra* note 10.

²³ *See* TPVs provided with Second Supplemental Response. LDC also provided a fourth TPV for a consumer whose complaint is outside the one-year statute of limitations. We note that the fact that LDC eventually provided these TPVs in response to the Bureau's LOI does not absolve it of its obligation to have responded timely to CGB's Notices of Informal Complaint.

switch carriers and did not confirm the telephone number that the consumers wanted to switch as required by our rules; rather LDC's verifier simply told the consumers that they would be "receiving one bill from [their] local phone company[ies] being billed on behalf of LDC Telecom as [their] long distance billing service provider."²⁴

9. The requirement to confirm that a consumer wishes to make a carrier change is crucial to ensure that there is no confusion or ambiguity about the fact that the consumer is changing carriers, particularly in the instant case where consumers contend they did not intend to change carriers at all. LDC's verifier stated that the call was being recorded "for accuracy and quality assurance" and suggested that LDC was going to be the complainants' "long distance *billing* service provider." These statements do not in any way alert consumers that they are agreeing to a carrier change and, in fact, suggest instead that LDC is simply providing a billing service. Therefore consumers are likely to be unaware that they will have a new long distance service provider until they receive their telephone bills.

10. With respect to the other 24 consumers whose complaints form the basis of this NAL, LDC provided no verification tapes or other evidence of authorization to change their preferred carriers. Thus, we presume these 24 complaints to be unauthorized changes in consumers' telecommunications service providers.

11. We also note that consumers who received bills with LDC charges and realized they had been slammed were further inconvenienced by the necessity to contact LDC to try and negotiate a refund and contact their previous carrier to have their services switched back.²⁵ Most consumers complain of the poor customer service they received when they called LDC or LDC's billing aggregator, ILD Teleservices, Inc.,²⁶ to cancel the service. Some complainants stated that LDC simply does not return their phone calls. For example, one complainant explained that he "[t]ried to contact LDC [but that] they have an 'answering service' which either hangs up immediately or transfers call to some bogus number/company. No LDC personnel willing to take call or call back."²⁷ Others complained that LDC

²⁴ *Id.*

²⁵ We note that not all of the complaints cited in this NAL arise out of incidents that occurred within one year of the release date of this NAL. Although our proposed forfeiture amount is based solely on the complaints that are within the statute of limitations, all of the complaints discussed herein illustrate the egregious nature of LDC's conduct. See *Sandhill Communications*, Notice of Apparent Liability, 25 FCC Rcd 17762, 17769 n.45 (Enf. Bur. 2010) (noting that Section 503(b)(6) does not bar the Commission from assessing whether a company's conduct prior to the statute of limitations period violated the Act and Commission rules and from considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period).

²⁶ The contact telephone number provided on the consumers' bills is for ILD Teleservices, Inc. (ILD). When consumers contacted ILD about the charges, ILD often referred them to LDC. See, e.g., Complaint from S. Comfort; Complaint from W. Gonzalez; Complaint from R. Morton. Apparently, LDC paid ILD to manage its billing requests to the LECs. LDC passed the consumer's telephone number to ILD, which in turn passed the number on to the LEC that provides the consumer's landline telephone service. LDC's charges then began appearing on the customer's telephone bill. In recent months, it appears that LDC began using ILD to bill consumers directly without going through the LECs. See Complaint from Heritage Motors (attaching an invoice the company received from LDC).

²⁷ Complaint from J. Janda; see also Complaint from S. Avina ("I tried to contact [LDC] for two months but no response."); Complaint from C. Barnette ("When I [saw] charges on my AT&T bill from [LDC], I immediately called them and was told that they would credit back the charges and would close my account. Then the next month I [saw] new charges and no credit for the other charges . . . I called on 2/21 and left a message because no one ever answers. You have to leave a message and they will call you back. I didn't get a call back."); Complaint from T. Cunningham ("[LDC] has not contacted us about restitution. They will not return any phone calls or correspondence."); Complaint from V. Patterson ("I have tried to contact LDC [] since October, only a voice mail

(continued . . .)

would not provide adequate refunds and instructed them to file a complaint with the FCC. For example, according to one consumer: “I told [LDC] that we never authorized this and I wanted a full credit refunded back to me for the whole time they charged us. They told me that a supervisor would have to get back with me. I never heard back from the supervisor so I called back . . . They informed me that a supervisor could only credit me with 50% on the last bill or I could just file a complaint with the FCC.”²⁸ The consumer harm could be substantial; one complainant stated that LDC charged him \$259.51 in March 2012 and \$371.14 in April 2012, but refused to issue any refunds and instead instructed him to file a complaint with the FCC or the Better Business Bureau.²⁹

12. We conclude that LDC apparently willfully and repeatedly violated Section 258 of the Act and Section 64.1120 of the Commission’s rules by submitting carrier change orders without proper authorization for each of the 27 consumers listed in the Appendix. We further find that LDC apparently willfully and repeatedly violated Section 64.1150(d) of the Commission’s rules by failing to respond to slamming complaints CGB sent to LDC.³⁰ We therefore propose a forfeiture for these apparent willful and repeated violations.³¹

B. Proposed Forfeiture Amount

13. Section 503(b)(1) of the Act states that any person who willfully or repeatedly fails to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.³² Section 503(b)(2)(B) of the Act authorizes the

(. . . continued from previous page) —————

machine answers stating that all representatives are busy. We have called numerous times and attempted to contact them numerous times before filing a complaint.”).

²⁸ Complaint from R. Morton. See also Complaint from T. Heller (“I called ILD Teleservices . . . I spoke to Rachel. She cancelled the account and said [ILD] would give me 20 percent credit on the charges. I was angry; I said no I wanted full credit because I didn’t authorize the charges. So she gave me no credit. She wouldn’t play the recording for me that she said she had with somebody giving authorization for the switch. She said I would have to file a complaint with the FCC to hear the recording.”); Complaint from R. Tartaglio (“They [LDC Telecommunications] refused to give us any information about the supposed ‘authorization.’ They would not comply with any information until an informal complaint is filed with the FCC.”).

²⁹ Complaint from S. Boschken. In some cases, the rates LDC charged were significantly higher than those of the consumer’s preferred carrier. See Complaint from H. Gleckman, who had unlimited long distance service for around \$20 with Verizon, and was charged \$128.67 by LDC in one month for long distance calls; Complaint from D. Goggans, who has unlimited long distance service with AT&T for \$21 a month, and was charged \$189.13 by LDC for long distance calls in one month.

³⁰ We previously released an NAL addressing LDC’s apparent failure to respond to the Bureau’s LOI. See *First LDC NAL* *supra* note 11. We do not address the issues raised in the *First LDC NAL* at this time.

³¹ Under the authority of Section 217 of the Act, the Commission has held carriers responsible for the failures of their telemarketers and third party verification companies to obtain proper authorization and verification for changes made to consumers’ primary carriers. LDC has failed to provide any evidence that it should not be held responsible for the actions of its third party verification company in the three cases where it produced verification tapes. See *Long Distance Direct, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3300, para. 9 (2000); 47 U.S.C. § 217. The Commission has held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors, and consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations. See *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-21864, para. 7 (2002) (citing *American Paging, Inc. of Virginia*, Memorandum Opinion and Order, 12 FCC Rcd 10417, 10420, para. 11 (Wireless Bur., Enf. and Cons. Inf. Div. 1997) (quoting *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244, para. 21 (1984)).

³² 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(2).

Commission to assess a forfeiture of up to \$150,000 for each violation by a common carrier, or each day of a continuing violation, up to a statutory maximum of \$1,500,000 for a single act or failure to act.³³ The Commission may assess this penalty if it determines that the carrier's noncompliance is "willful or repeated."³⁴ For a violation to be willful, it need not be intentional.³⁵ In exercising our forfeiture authority, we are required to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."³⁶ In addition, the Commission has established guidelines for forfeiture amounts and, where there is no specific base amount for a violation, retained discretion to set an amount on a case-by-case basis.³⁷

14. The Commission's forfeiture guidelines currently establish a base forfeiture amount of \$40,000 for violations of our rules and orders regarding unauthorized changes of preferred interexchange carriers.³⁸ The Commission has warned carriers that it will take swift and decisive enforcement action, including the imposition of substantial monetary forfeitures, against any carrier found to have engaged in slamming.³⁹ Applying the \$40,000 base forfeiture amount to each of the 27 unauthorized carrier changes results in a forfeiture amount of \$1,080,000.

15. In this case, LDC has also repeatedly failed to respond to slamming complaints CGB sent to the Company. Seven of these complaints are within the one-year statute of limitations and are therefore actionable.⁴⁰ Section 1.80 of the Commission's rules establishes a base forfeiture amount of \$4,000 for failure to respond to a Commission communication.⁴¹ Applying the \$4,000 base forfeiture amount to each of the seven complaints results in a forfeiture of \$28,000.

16. While we consider LDC's conduct particularly egregious, as demonstrated by its failure to respond to the complaints that form the basis of this NAL, and would normally find a significant upward adjustment appropriate, we do not propose an upward adjustment in light of LDC's size and its apparent inability to pay a higher amount. Instead, we find that a proposed forfeiture amount of \$1,108,000 is appropriate under the circumstances of this case. We believe a proposed \$1,108,000

³³ 47 U.S.C. § 503(b)(2)(B); *see also* 47 C.F.R. § 1.80(b)(2); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 23 FCC Rcd 9845 (2008) (adjusting the maximum statutory amounts from \$130,000/\$1,300,000 to \$150,000/\$1,500,000).

³⁴ 47 U.S.C. § 503(b)(1)(B) (the Commission has authority under this section of the Act to assess a forfeiture penalty against a common carrier if the Commission determines that the carrier has "willfully or repeatedly" failed to comply with the provisions of the Act or with any rule, regulation, or order issued by the Commission under the Act); *see also* 47 U.S.C. § 503(b)(4)(A) (providing that the Commission must assess such penalties through the use of a written notice of apparent liability or notice of opportunity for hearing).

³⁵ *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991).

³⁶ 47 U.S.C. § 503(b)(2)(E); *see also The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17100 (1997) (*Forfeiture Policy Statement*); *recon. denied* 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

³⁷ *Forfeiture Policy Statement*, 12 FCC Rcd at 17098–99, para. 22.

³⁸ *See* 47 C.F.R. § 1.80(b).

³⁹ *See, e.g., Brittan Communications International Corp.*, Order of Forfeiture, 15 FCC Rcd 4852 (2000); *Amer-I-Net Services Corp.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 3118 (2000); *All American Telephone Company, Inc.*, Notice of Apparent Liability for Forfeiture, 13 FCC Rcd 15040 (1998); *Silv Communication Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 5178 (2010).

⁴⁰ These seven complaints are a subset of the 27 total slamming violations.

⁴¹ 47 C.F.R. § 1.80; *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17114.

forfeiture amount will protect the interests of consumers and serve as an adequate deterrent. Carriers should, however, be on notice that the Commission considers violations such as the ones discussed herein to be serious and that future similar violations may receive significant upward adjustments.

IV. CONCLUSION

17. We have determined that LDC Telecommunications, Inc. has apparently willfully and repeatedly violated Section 258 of the Communications Act of 1934, as amended, and Sections 64.1120 and 64.1150 of the Commission's rules.

V. ORDERING CLAUSES

18. Accordingly, **IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that LDC Telecommunications, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR FORFEITURE** in the amount of one million, one hundred eight thousand dollars (\$1,108,000), for willful and repeated violations of Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 64.1120 and 64.1150 of the Commission's rules, 47 C.F.R. §§ 64.1120 and 64.1150.

19. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules,⁴² within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture, LDC Telecommunications, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

20. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. LDC Telecommunications, Inc. shall send electronic notification of payment to Johnny Drake at Johnny.Drake@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁴³ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank –

⁴² 47 C.F.R. § 1.80.

⁴³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁴⁴ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

21. The response, if any, must be mailed both to: Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division; and to Richard A. Hindman, Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, and must include the NAL/Acct. No. referenced in the caption.⁴⁵ Documents sent by overnight mail (*other than* United States Postal Service Express Mail) must be addressed to: Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743. Hand or messenger-delivered mail should be directed, without envelopes, to: Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554 (deliveries accepted Monday through Friday 8:00 a.m. to 7:00 p.m. only). See www.fcc.gov/osec/guidelines.html for further instructions on FCC filing addresses.

22. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

23. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail Return Receipt Requested and First Class mail to LDC Telecommunications, Inc., Attention: Sean Connors and Richard Clark, 2451 McMullen Booth Road, Suite 200, Clearwater, Florida 33759.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴⁴ See 47 C.F.R. § 1.1914.

⁴⁵ All further communications with respect to this case should use the new file number.

APPENDIX

Complainant	Commission File No., if Filed with FCC	Date of Slam
R. Tartaglio (Randolph's Fine Jewelry)	11-S3212284	8/31/11
S. MacPhail	11-S3211346	9/1/11
J. Dye	11-C00329991-1	9/6/11
C. Fry	11-C00330687-1	9/8/11
R. Gittel	11-C00330879	9/9/11
J. Hartman	11-C00330862	9/9/11
D. Roberts	11-C00331375	9/12/11
K. Pierce	11-S3247574	9/13/11
N. Habecker	11-C00332259	9/14/11
T. Cunningham	11-S003228	9/17/11
R. Morton (Cox Roofing Co.)	11-S3251644	9/21/11
B. Roadarmel	11-C00333876	9/21/11
J. Janda	11-S3255020	10/4/11
D. Goggans	12-S3308637	12/26/11
K. Ames	12-S3332060	1/4/12
S. Saykali		1/17/12
R. Efird	12-C00370314	2/13/12
P. Desler		2/16/12
W. Wolf (AAA Concrete)	11-C00392934	3/3/12
S. Bodenhamer		3/29/12
L. Adams (Stewartstown Presbyterian Church)	12-S3409098	4/15/12
T. Rose	12-S3435907	4/15/12
P. Dehlan (California Smog Repair, Inc.)	12-C00390144	4/18/12
M. Boyd (Heritage Transmission & Motors)	12-S003392	4/23/12
S. Boschken		4/27/12
B. Cox	12-S3428519	5/15/12
M. Pryor	12-C00397979	5/23/12

**STATEMENT OF COMMISSIONER AJIT PAI,
APPROVING IN PART AND DISSENTING IN PART**

Re: *LDC Telecommunications, Inc. Apparent Liability for Forfeiture*, File No. EB-TCD-12-00000420, NAL/Acct. No.: 201232170010, FRN: 0004337556, Notice of Apparent Liability for Forfeiture

I support today's action against LDC Telecommunications, Inc., which apparently substituted itself as the long-distance service provider for (or "slammed," as it is more commonly known) at least 27 consumers without proper authorization. And I thank the Enforcement Bureau staff for the diligent investigative work that led to this order. When a company evades responding to Commission inquiries,⁴⁶ consumers will be vindicated only if our staff remains vigilant in pursuing the alleged violator.

There is one aspect of today's order where I diverge from my colleagues. In my view, the forfeiture amount proposed by the Commission is simply *too low* given the egregious nature of LDC's conduct. LDC failed to provide a single verification tape showing it had authorization to switch a consumer's long-distance service provider (as required under our rules) and provided no defense whatsoever with respect to 24 of the complaints at issue.⁴⁷ Moreover, LDC's business appears to have been immensely profitable: Consumers who were the victims of LDC's slamming reported receiving monthly bills of \$128.67, \$189.13, \$259.51, and \$371.14 even though those same consumers' previous long-distance bills had been about \$20. As mentioned above, LDC also simply ignored our inquiries, which prompted the Commission earlier this year to follow up with a Notice of Apparent Liability. Finally, LDC's treatment of consumers who complained to them was appalling. LDC staff did not return phone calls, hung up on callers, refused to take calls, and otherwise gave consumers the run-around. If a caller somehow managed to reach a supervisor, the response was apparently "File a complaint with the FCC."⁴⁸ Thankfully, more than twenty-seven of those consumers took them up on the suggestion and did in fact file complaints with the Commission. It thus became our duty to respond appropriately. Part of that duty involves finding a violation of our rules; the other part requires fixing a forfeiture amount calibrated to protect consumers' interests and deter future violations.

It is in carrying out that second aspect of our adjudicative duty where I cannot follow my colleagues' path. The Commission limits the amount of the proposed forfeiture here based upon "LDC's size and its apparent inability to pay a higher amount."⁴⁹ The initial problem with this approach is that we don't have sufficient information to know if this is true. Moreover, the normal course—as recognized by the Commission just six paragraphs later—is that we take into account an apparent violator's (in)ability to pay a forfeiture *after* the apparent violator responds to the Notice of Apparent Liability with concrete evidence that it cannot pay.⁵⁰ This makes sense: We can lower a proposed forfeiture that is too high, but leniency requires a factual foundation. And because the company is in the best (perhaps only) position to demonstrate its ability to pay, we need not guess at this point when the company may provide accurate

⁴⁶ As today's order notes, LDC was largely unresponsive to Commission inquiries until three months *after* the Commission issued a Notice of Apparent Liability against LDC for failing to respond to our inquiries. See Notice of Apparent Liability for Forfeiture at para. 3; *LDC Telecommunications, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 300 (2012).

⁴⁷ Notice of Apparent Liability for Forfeiture at paras. 8–10.

⁴⁸ *Id.* at para. 11 & notes 26–29.

⁴⁹ *Id.* at para. 16.

⁵⁰ Specifically, the Commission states that it "will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status." *Id.* at para. 22.

information later, if and when it responds to the Notice. LDC did not take into account consumers' ability to pay when it sent expensive long-distance bills to those it had slammed, and I do not think that it is our role to make LDC's ability-to-pay argument for it at this stage of the proceeding.

In sum, I agree with the Commission that LDC's conduct was "particularly egregious" and that it warrants a "significant upward adjustment" in the proposed forfeiture amount.⁵¹ This is not a run-of-the-mill case that warrants only a base forfeiture. Because I believe that the forfeiture amount should indeed be significantly higher, I respectfully dissent in part.

⁵¹ *Id.* at para. 16.